where the nozzles were and he took them to where they were.

I agree with the learned President that the story is unconvincing since the appellant has given no explanation why he was performing this particular service. He does not tell the Court what the reason was which the thief gave for asking him to take the parcel. The thief was not a salesman. The appellant appears to have made no enquiries whatsoever as to what he was taking, or explained why he took it and why he took it straight to his own room and not back to his place of work.

A further point arose on the appeal. One of the grounds of appeal was that at the close of the defence the learned President refused to allow counsel to make his submission. Counsel sought to file with his petition of appeal an affidavit stating that after the appellant had made a statement from the dock he was not allowed by the learned President to make any submission to the Court. I consider that it is not open to the Court to consider this affidavit. The Court is bound by the record which is placed before it. If that record appears to the appellant to be lacking in any particular, I consider that the proper procedure is for the appellant or his counsel to write to the Clerk of the Court asking him to bring the alleged omission to the notice of the learned President. If the learned President agrees that what is alleged is true it will then be read with the record. If the learned President disagrees it will not be read with the record. The remedy of the appellant if he is dissatisfied may possibly lie elsewhere.

In this particular case the Court appears to have relied upon the strict wording of section 174(ii) of the Criminal Procedure Code which regulates closing addresses; it reads: "When the accused is called upon to enter on his defence, he or his advocate.....if the accused gives evidence or witnesses are examined on his behalf may sum up his case."

The case of *Mahindar Singh v. Public Prosecutor*[2] is authority for the proposition that failure to give the defence an opportunity to address the Court at the close of the case is an irregularity sufficient to justify a retrial. The report does not disclose whether or not any evidence was led for the defence.

I do not consider that a statement by an accused person from the dock is evidence in view of the provisions of section 4(1)(a) of the Oaths and Affirmations Ordinance, 1949, the essential part of which reads ".....oaths shall be taken by.....witnesses, that is to say, all persons who.....give evidence.....before any Court .....". Since the appellant was not sworn or affirmed he did not give evidence.

It would appear, therefore, that strictly speaking the appellant had no right to make any submission whatever after making a statement from the dock since he had not given evidence.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Bannon & Bailey.*

PUBLIC PROSECUTOR v. TAHIR BIN AHMAD

[A.Cr.J. (Good J.) August 21, 1958]

[Ipoh — Criminal Appeal No. 32 of 1958]

Criminal Law and Procedure — Sentence — Inadequacy of sentence for offence of extortion — Penal Code, s.383.

This was an appeal by the Public Prosecutor against the inadequacy of sentence imposed on the respondent who as a special Constable on duty at a gate check at a New Village had committed the offence of extortion from a female rubber tapper for which he was sentenced to a fine.

The Magistrate's reasoning in passing the sentence was that the respondent was in receipt of a small salary and the fact that on conviction he will be dismissed from the Police Force.

Held: (1) extortion is a most serious offence, and it would be a very alarming prospect if the smallness of income of special Constables was to be taken as an excuse for extorting money from the public;

(2) the fact that the respondent would be dismissed from the Police Force as a result of his conviction, which the Magistrate took into account, had very little bearing, if any, upon the forensic consequences of his crime.

In all the circumstances of the case, the sentence of a fine was set aside and a sentence of six months' imprisonment substituted therefore.

MAGISTRATE'S APPEAL.

Abdul Kadir bin Yusof (Federal Counsel) for the appellant.

Respondent in person.

Good J. (giving oral judgment): — This appeal does not concern the conviction of the respondent on a charge of extortion. It is an appeal by the Deputy Public Prosecutor against inadequacy of sentence. The respondent alleges that the case was what is known as a "frame-up." Since the record has come to my knowledge, I am entitled to look at it, and with a view to possible exercise of my revisionary

powers I am entitled to consider whether the respondent was properly convicted. I have read the evidence and I am satisfied that there was abundant evidence from which the learned Magistrate was entitled to find, and was justified in finding, that the accused had committed the offence alleged. I see no reason to go behind the finding of the learned Magistrate in this respect. I am therefore concerned solely with the question of sentence.

The respondent was a Special Constable on duty at a gate check at a new village; his duty being to ensure that food and restricted articles were not taken out of the village in contravention of regulations and orders under the Emergency Regulations. His job was to play his part however small in giving effect to the food denial operations which are so essential to the success of operations to end the Emergency. Of course, such a position provides abundant opportunities to persons who are dishonest and who do not appreciate the importance of the duties which they are called upon to perform to extract presents from members of the public, especially simple villagers — in this case of a female rubber tapper. It is so easy to do and so difficult to find out because in the vast majority of such cases the victim would not be likely to make a report.

I regard this as a most serious offence and I simply cannot comprehend the reasoning of the learned Magistrate in his observations on sentence at the end of his grounds of decision. I presume that there are in this country thousands of Special Constables who are employed at the same income as the accused, and it would be a very alarming prospect if the smallness of their income was to be taken as an excuse for extorting money from the public. Furthermore, the learned Magistrate took into account that the result of conviction will be dismissal from the Police. I should have thought that was an obvious and necessary consequence of what the respondent has done, and that it had very little bearing, if any, upon the forensic consequences of his crime. In all the circumstances, I consider that the learned Magistrate ought to have imposed a sentence of imprisonment notwithstanding the fact that the accused may have been a person with no previous criminal record.

I set aside the sentence of a fine. I see that it has been paid and I order that it be refunded, and I substitute the sentence of six months' imprisonment.

Order accordingly.

PUBLIC PROSECUTOR v. LAM KOK LOONG AND ORS.

[R.Cr.J. (Good J.) August 21, 1958]

[Ipoh — Criminal Revision No. 16 of 1958]

Gaming — Forfeiture of money not found on the premises — Common Gaming Houses Ordinance, 1953, s.16(2) — Binding over under s.173A (i) (b) Criminal Procedure Code (Cap. 6.)

In this case four persons were charged under the Common Gaming Houses Ordinance, 1953, with assisting in the management of the place used as a Common Gaming house namely, The International Club, Kroh. All the accused were bound over under section 173(a) of the Criminal Procedure Code. After arriving at that result, the learned Magistrate proceeded, on the application of the prosecution, to order the forfeiture of a sum of $1,821.50 standing in the name of the Club with the Chartered Bank at Butterworth, which sum was proved in the course of evidence to represent the profits from the gaming in respect of which the four accused had been bound over.

On reconsidering the correctness of his order of forfeiture the learned Magistrate brought the matter to the notice of the High Court.

Held: section 16(2) of the Common Gaming Houses Ordinance, 1953 does not empower the Court to order forfeiture of any money which is not found in a Common Gaming House or on any persons found therein or escaping therefrom.

CRIMINAL REVISION.

Abdul Kadir bin Yusof (Federal Counsel) for the Public Prosecutor.

Respondents not represented.

Good J. (giving oral judgment): — In this case four persons were charged under the Common Gaming Houses Ordinance, 1953, with assisting in the management of a place used as a common gaming house, namely, The International Club, Kroh. In the event they were all bound over under section 173A (i) (b) of the Criminal Procedure Code. But after arriving at that result, the learned Magistrate proceeded, on the application of the prosecution, to order the forfeiture of a sum of $1,821.50 standing in the name of the Club with the Chartered Bank at Butterworth, and proved in the course of the evidence to represent the profits from the gaming in respect of which the four accused had been bound over.

The learned Magistrate subsequently had second thoughts about the correctness of his order for forfeiture, and he very properly brought the matter to my notice in order to give me an opportunity of exercising my powers of revision if I should consider that order was wrong. He purported to act under section 16(2) of the Common Gaming Houses Ordinance, 1953. That sub-section is perfectly clear and it is not